

**Testimony of**  
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**House Committee on Veterans' Affairs**  
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Good afternoon, Chairman Runyan, Ranking Member Titus, and Members of the Subcommittee. I am accompanied today by Mr. Ronald S. Burke, Jr., Director of the Appeals Management Center and the National Capital Region Benefits Office, Veterans Benefits Administration (VBA). Thank you for inviting me to speak to you today on the important topic of the Veterans benefits appeals system, and specifically what the Department of Veterans Affairs (VA) is doing to make the appellate process more timely and efficient for our Nation's Veterans and their families.

Overview of the Appellate System and the Role of the Board

The Veterans disability benefits appeals adjudication system, which includes all compensation claims, operates in two stages. The majority of the appellate process is conducted at the VBA regional office (RO) level before the case is transferred to the Board of Veterans' Appeals (BVA or Board) for a final agency decision. An appeal is initiated at the VBA RO level by the Veteran filing a "Notice of Disagreement" (NOD) expressing dissatisfaction with one or more matters in the initial VBA decision. VBA then reviews the record, conducts any additional evidentiary development required by law, and issues a second decision called a "Statement of the Case" (SOC), which contains a summary of the evidence, a summary of the applicable laws and regulations, and a discussion of the reasons for the decision. If the Veteran is dissatisfied with the SOC, the Veteran may file a formal appeal at VBA, called a "Substantive Appeal," (VA Form 9). If there are any changes in the record, such as new evidence, VBA may need

to issue one or more additional decisions, called a “Supplemental Statement of the Case.” When VBA completes work on the appeal, VBA will certify and transfer the appeal to the Board for a final appellate decision. The Board handles appeals from various parts of VA, but 97 percent of the Board’s workload comes from compensation and pension claims that were initially adjudicated by VBA. The remainder of appeals before the Board comes from other VA offices such as the National Cemetery Administration, the Veterans Health Administration (VHA), and VA’s Office of General Counsel (OGC). The Board’s mission, as defined by statute, is “to conduct hearings and dispose of appeals properly before the Board in a timely manner” while providing Veterans with “one review on appeal to the Secretary.” In practical terms, this means that the Board has a very unique role in VA, in that it provides a “*de novo*” or “new” look at each case being appealed from the ROs, which includes a top-to-bottom review of every single piece of evidence in the record: evidence that the Veteran submits, evidence that VA has in its possession relevant to the claim, and evidence that VA is required to obtain on the Veteran’s behalf. The decision made by the local RO receives no deference from the Board – in other words, the Board is not charged with assessing the RO’s decision; rather, the Board takes an entirely new look at the record. Each decision of the Board must contain written findings of fact and conclusions of law, as well as reasons or basis for those findings and conclusions, on all material issues of fact and law presented. This *de novo* review is consistent with the pro-claimant protections of the benefits claims and appeals system, which includes a multitude of safeguards for the Veteran built in at each step of the process.

The Board’s workload and output are substantial with case receipts of in fiscal year 2012 of 49,611. In fiscal year 2012, the Board issued 44,300 decisions, 28.4% of which were grants of benefits, and conducted 12,334 hearings. The Board’s cycle time for fiscal year 2012 was 117 days, which represents the time from when an appeal is physically received at the Board until a decision is reached, excluding the time the case is with a Veterans Service Organization (VSO) representative for preparation of written argument. The Board is required by statute to consider appeals in docket order, which requires that the oldest appeals be worked first. Currently, the Board has a pending

inventory of 45,487 appeals. The oldest appeal is not defined by the date that the appeal arrives at the Board – rather, the oldest appeal is defined by the date that the Veteran completed the appeal at the local level – sometimes long before the appeal reaches the Board’s offices. This means that Veterans who have been waiting the longest are the first to receive action on their appeal from the Board.

The Board currently has over 300 staff counsel who are each required to produce an average of three decisions per week on an annual basis for 52 non-supervisory Veterans Law Judges and 12 supervisory Veterans Law Judges. Each non-supervisory Veterans Law Judge is, in turn, required to sign at least 752 decisions per year.

The amount of evidence associated with each appeal has been steadily rising over the years, as has the number of issues per appeal, which results in longer, more complex Board decisions explaining the reasons and bases for VA’s ultimate decision. In fiscal year 2012, the average one-issue case included 2.13 binders of documentary evidence, which is up from 5 years ago in fiscal year 2008 when it was 1.64 binders of evidence for a one-issue case. Each binder of evidence is between 2-4 inches high, and does not include the evidence that is currently part of each Veteran’s Virtual VA record. The number of issues per case has also increased over the past decade. In fiscal year 2003, the number of issues the Board adjudicated in each of its decisions averaged 1.86 issues per case. In fiscal year 2012, the average number of issues adjudicated per Board decision rose to 2.43, resulting in a 30-percent increase in the number of issues decided per Board decision in less than 10 years.

This means that the Board is deciding more issues, and reviewing more evidence for each case it decides, than ever before. The Board looks forward to VA’s movement to a fully electronic appeals adjudication system having efficiencies that will help VA to better handle this burgeoning workload. This system will not change the fundamental statutory requirement that the Board fully review what is becoming an ever-growing amount of evidence and issues for each appeal.

The Board's decisions are also growing increasingly complex due to activity from the Court of Appeals for Veterans Claims and the Federal Circuit. The Board's position on the front lines with the Courts means that the Board has to adjust to an ever-changing legal landscape, drafting decisions that look like dense legal briefs, while at the same time drafting decisions that are understandable to the Veterans we serve.

Even with growing complexity, Veterans have enjoyed an unprecedented level of success at the Board in recent years. As with VBA, claims are denied only when there is no other option based upon the law and the evidence. If a claim cannot be granted and there is an indication that additional, favorable evidence may still be obtained, then the Board will remand the claim to preserve the Veteran's chance at a favorable outcome. In fiscal year 2012, the Board allowed more benefits for Veterans and denied fewer claims than ever before. Of the 44,300 appeals decided by the Board in fiscal year 2012, 28 percent were allowed and slightly less than 23 percent were denied. That same year, over 45 percent were remanded to ensure that all procedural protections have been provided, in terms of additional evidentiary development to hopefully provide a chance of allowing a benefit for the Veteran.

#### Challenges Resulting from Remands

Despite the success that has been achieved over the past several years, many challenges remain as we seek to reduce the pending inventory of appeals and increase efficiency within the process. Remands in particular remain a challenge that VA is aggressively addressing. By remanding a case, the Board sends the appeal to the Agency of Original Jurisdiction (AOJ), most typically the VBA's Appeals Management Center (AMC), for the completion of additional evidentiary development. Remands are directly tied to procedural protections built into the Veterans benefits appeals system to ensure that no stone is left unturned and that Veterans benefit from maximum development of the evidentiary record. Although remands add time to appeals adjudication, they are in large part the result of VA's efforts to do everything possible to

get it right for the Veteran and ensure that no potentially favorable evidence is overlooked.

There are essentially two kinds of remands in the VA appeals system, those that are avoidable and those that are unavoidable. Avoidable remands are remands resulting from inadequate evidentiary development at the AOJ level before certification and transfer of the appeal to the Board. In other words, some deficiency in evidence gathering on the part of VA required the Board to remand the case to the AOJ. Unavoidable remands, however, are not the result of any mistake on the part of VA. Rather, these remands are a result of the pro-claimant open record, which allows development of new evidence up until the point that a final decision is signed and mailed to the Veteran. Unavoidable remands are often the result of additional development that VA must undertake as a result of the Veteran's identification of additional evidence after the appeal has been transferred to the Board, or the submission of new evidence by the Veteran, which in turn triggers additional development as a result of VA's statutory duty to assist. Unavoidable remands are also often the result of the Veteran's introduction of a new theory of entitlement for the first time at the Board level, which also requires evidentiary development.

Such remands are the result of significant procedural protections built into the Veterans benefits system, which can result in additional time needed to adjudicate appeals, but also ensures every opportunity to gather evidence favorable to the Veteran. Indeed, many remands are the result of VA's efforts to secure evidence to fairly decide the claim. Unavoidable remands in particular are the result of the unique nature of the Veterans benefits system, which allows for the submission of evidence throughout the VA appeals process. This open record system is virtually unparalleled as compared to other courts or areas of administrative law, and contributes significantly to delays in the system.

A large majority of remands in the system are unavoidable. As of June 2013,

64 percent of Board remands have been unavoidable and only 36 percent have been avoidable. Over the past several years, there has been a steady decline in the number of avoidable remands and a steady increase in the number of unavoidable remands. By comparison, in fiscal year 2005, when VA first began tracking this data, 60 percent of remands were avoidable and only 40 percent were unavoidable. This steady improvement is strong evidence that VA's continued efforts to reduce the number of avoidable remands are paying dividends for Veterans.

Although a large majority of remands in the VA appeals system are unavoidable, VA continues to take aggressive action to reduce the number of avoidable remands. Both VBA and the Board have implemented a Joint Training Initiative designed, in large part, to reduce the number of avoidable remands. Training materials and presentations designed as part of this effort are crafted with input from both Board and VBA subject matter experts, and include feedback from VA's OGC. Many of the training materials produced as part of this effort are keyed to address the top reasons for remands and recent trends in Veterans' law.

The adequacy of medical examinations and opinions, such as those with incomplete findings or supporting rationale for an opinion, has remained one of the most frequent reasons for remand. VA's statutory duty to assist Veterans in obtaining evidence needed to substantiate their claim requires that a medical examination and opinion be provided, unless the evidence already in the record is legally adequate to decide the claim. Such examinations are generally performed by VHA clinicians. To combat the challenge of remands for examinations and opinions, the Board has partnered with VHA's Office of Disability and Medical Assessment (DMA) in an effort to improve the compensation and pension examination process and enhance the quality of examination reports provided by VHA physicians. The Board has welcomed representatives from DMA to the Board's facility on numerous occasions over the past several years to discuss matters relating to VA examinations and develop better training modules for physicians. The goal of these training efforts is to produce examinations

that are medically and legally adequate so that remand for supplemental medical examinations and opinions can be avoided.

VA also anticipates that full utilization of the Disability Benefits Questionnaire (DBQ) process will result in fewer remands due to inadequate medical examinations. DBQs have been specifically designed to directly address the requirements of the VA Schedule for Rating Disabilities, and ensure that all medical information needed to decide claims and appeals is elicited from the examiner. The Board continues to work with our partners at VHA and VBA to further refine the DBQs in line with legal requirements, and make them an even more effective tool in reducing the number of avoidable remands.

The cases that are being remanded by the Board to the AMC are being worked faster than ever. In 2009, remanded cases remained pending at the AMC for nearly 400 days before being recertified to the Board. That number has dropped to only 115 days pending today, a dramatic 71-percent decrease. If current trends continue as we anticipate, the number of days remands remain pending at the AMC will drop to below 100 by the end of the fiscal year. This represents a huge improvement in a very short time.

#### VA Initiatives to Improve the Appeals System

VA is actively pursuing several initiatives to further improve the appeals system and reduce wait times for Veterans. Among those efforts will be the full implementation of the Veterans Benefits Management System (VBMS) at each level of the appeals system, including the Board. VBMS, along with several other people, process, and technology initiatives, will help us eliminate the backlog. The Board has been working with our partners at VBA and VA's Office of Information and Technology (OIT) for over 3 years to define the Board's business requirements that will need to be programmed to maximize VBMS efficiency for appeals. These efforts are a continuation of the Board's long history of working with our VA partners on paperless appeals. Nearly all Board

employees directly working appeals have completed initial VBMS training, and we anticipate that all Board staff will have VBMS access this summer.

VBMS will ensure that Veterans claims files are protected from damage or loss and are securely backed up. The VBMS system will also save considerable time and money currently spent mailing claims files back and forth between parts of VA, specifically between the Board and the various VA ROs. VBMS will also allow different offices in VA to work different claims at the same time, eliminating delays currently spent temporarily transferring claims files between different parts of VA and the down-time spent while another office works on a claim. Although VBMS will result in these and several other administrative efficiencies, it will not change VA's duty to assist the Veteran in the development of the evidentiary record, nor will it alter the Board's duty to perform a comprehensive *de novo* review of each and every piece of evidence in the record on appeal to render a fair decision. Whether the record is paper or electronic, the Board will still be obligated to look at every page in it to make sure that every favorable piece of evidence is identified and given due consideration.

The Board is also leveraging technology in several other ways. The Board has begun the process of scanning all new Board hearing transcripts, mail, and certain types of representative argument into Virtual VA to make the eventual transition to VBMS easier, while further saving both money and time needed to print documents and associate them with the paper claims file.

Both the Board and VBA have also converted to a virtual docket for scheduling Board hearings. The virtual docket system replaces a completely paper-based system for hearing scheduling that was often utilized very differently across different offices. The virtual docket system saves considerable administrative time associated with scheduling hearings, ensures uniformity in scheduling practices across various offices, and allows for greater scheduling transparency so that available hearing dates and times can be quickly identified by VA staff regardless of physical location.



The Board has also completed major technological upgrades to its video conference hearing equipment over the past several years. This includes the purchase of high-definition video equipment, a state-of-the art digital audio recording system, and significantly increased video conference hearing capacity. As a result of these improvements, we have also expanded the video conferencing system for hearings to other strategic satellite sites in the continental United States, Puerto Rico, Guam, American Samoa, and the Philippines to support Veterans living in remote areas.

The Board is holding more video conference hearings than ever before to fully capitalize on the critical upgrades to its video conference hearing technology. Thus far in fiscal year 2013, slightly over half of the Board's hearings are being held by video conference. This is an increase from fiscal year 2012, where only 39 percent of the Board's hearings were held by video conference.

VA hopes to continue this trend toward greater use of video conference hearings, but current statutory restrictions prevent us from using this important technology to the fullest. That is why VA fully supports the passage of § 202 of the S.928, the "Claims Processing Improvement Act of 2013," that was recently introduced in the Senate by Chairman Sanders. Section 202 would allow for greater use of video conference hearings, would potentially decrease hearing wait times for Veterans, enhance efficiency within VA, and better focus Board resources toward issuing more final decisions.

The Board has historically been able to schedule video conference hearings more quickly than in-person hearings, saving valuable time in the appeals process for Veterans who elect this type of hearing. In fiscal year 2012, on average, video conference hearings were able to be held almost 100 days sooner than in-person hearings. Section 202 would allow both the Board and Veterans to capitalize on these time savings by giving the Board greater flexibility to schedule video conference hearings than is possible under the current statutory scheme.

Historical data also shows that there is no statistical difference in the ultimate disposition of appeals based on the type of hearing selected. Veterans who had video conference hearings had an allowance rate for their appeals that was virtually the same as Veterans who had in-person hearings, only Veterans who had video conference hearings were able to have their hearings scheduled much more quickly. Section 202 would, however, still afford Veterans who want an in-person hearing with the opportunity to specifically request one.

In short, § 202 would result in shorter hearing wait times, better focus Board resources on issuing more decisions, and provide maximum flexibility for both Veterans and VA, while fully utilizing recent technological improvements. VA, therefore, strongly endorses this proposal. In addition to the legislative proposal on video conference hearings, VA has included four other legislative proposals related to improving the appeals process in VA's FY 2014 budget submission and we appreciate Congress' continued consideration of those measures. In summary, those proposals are as follows: reduce the period of time for to file an initial appeal from one year to 180 days; clarify that a timely filed Substantive Appeal (VA Form 9) is a jurisdictional requirement for BVA review; simplify the content requirements of BVA decisions; alter the requirements for obtaining fees under the Equal Access to Justice Act (EAJA) to align such fees to an actual award of benefits for the Veteran.

The Board also played a key role in the VBA Appeals Design Team (discussed below), which looked at finding efficiencies in the appeals processing at the RO level. The Board's Chief Quality Review Officer was an active participant on that design team. As part of the pilot, the Board reviewed 50 appeals that had been through all facets of the pilot to assess the readiness of the appeals for certification to the Board for a final decision. The results were encouraging, as 80 percent of the cases presented to the Board in that pilot were deemed ready for certification, with only 20 percent being identified as requiring additional action. In addition to these efforts, the Board is also pursuing a lean six sigma study of how it produces appellate work in its offices to

identify further efficiencies in processes, in order to speed up the decision drafting process.

### Appeals Design Team Pilot Program

VBA and the Board have conducted an Appeals Design Team pilot, looking at ways to reduce the amount of time it takes to process appeals and improve customer service and timeliness. Using a lean six sigma approach, initiatives were developed to improve quality, primarily through in-process reviews and the use of a certification checklist.

A key recommendation in the pilot is standardizing the Notice of Disagreement (NOD). The purpose of this standardization was to improve communication with the Veteran at the front-end of the appeals process. Also, the standardized form allows VBA staff to easily identify a submission as an NOD for ease, speed, and accuracy of processing. The use of the NOD form has been responsible for greatly lowering the amount of time needed to prepare a Statement of the Case and ultimately certify an appeal.

Because claims and appeals processors often must sort through lengthy statements that include both NODs and new disability claims, the standardized form facilitated more accurate and faster processing of NODs while significantly reducing the number of letters VA must otherwise send to an appellant to request clarification of the issue under appeal. To accommodate those filing claims online, the appeals form will be uploaded to eBenefits so that Veterans have a prescribed form to assist with the filing of their appeals.

In addition to standardizing the NOD, the Appeals Design Team tested the effectiveness of a local waiver form, allowing the local RO to expedite the certification of the Veteran's appeal to the Board. This recommendation had an extremely positive impact on certifications to the Board.

In addition, specific collaboration was undertaken with the VSOs to ensure we captured their best ideas and to guarantee cooperation from the onset. A member of the VSO community was, in fact, a member of the Appeals Design Team. As part of the ongoing improvements to the appeals process, Decision Review Officers and VSOs interact early on in the process, as we believe communication is key to appeals resolution at the earliest possible point.

#### VA's Recent Initiative to Address Old Claims

VBA's performance in the appeals process will not be affected by the recent initiative to address VA's oldest claims, nor will appeal rights be withheld for any claimant whose case is part of the initiative. For ready-to-rate cases in which all the evidence is available, full appeal rights will be provided as usual at the time of the decision. Provisional decisions will also be made based on the available evidence in the claims folder, which will allow VA to more quickly decide the oldest claims in the inventory and expedite delivery of benefits to claimants. In these cases, Veterans will be afforded full appeal rights no later than one year after the provisional decision or at an earlier point if the Veteran requests a final decision or if all outstanding evidence is received prior to the end of the 1-year provisional window.

As of June 13, 2013, we have reduced the number of claims over two years old that needed to be worked under this initiative from 62,180 at the beginning of the initiative on April 19, 2013, to 6,305 – a 90% reduction. We have also seen a 7.5% reduction in the number of claims pending between one and two years, from 210,714 to 194,925 claims.

#### Conclusion

VA is working aggressively to reduce the pending inventory of appeals in an increasingly complex legal landscape. New training efforts between the VBA, VHA, and the Board, together with full utilization of DBQs, will help to further reduce the number of

avoidable remands. At the same time, efficiencies gained through the introduction of VBMS will serve to lessen the administrative burdens in the claims and appeals system to better focus resources on issuing decisions more quickly and accurately than ever before.

Lessons learned from the Appeals Design Team and increased use of video conferencing technology for Board hearings will add valuable efficiencies into the system and result in positive change for Veterans. However, for Veterans to achieve the maximum benefit from VA's significant investment in state-of-the art video conferencing technology, full Congressional support of § 202 of the Veterans Claims Improvement Act of 2013 is needed.

This concludes my testimony. I would be happy to address any questions from Members of the Subcommittee.